

IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CWP No.9360 of 2007
Date of decision: 10. 7.2007

Vikash Nagi

...Petitioner

vs.

Punjab University Chandigarh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE AJAI LAMBA

Present: Mr. Arvind Singh, Advocate, for the petitioner.

Mr. DPS Randhawa, Advocate for respondent No.1.
Mr. Akshay Bhan, Advocate for respondent No.2.
Mr. Vikas Awasthy, Advocate for respondent No.3.

JUDGMENT:

This petition seeks a direction to allow the petitioner to appear in the Second Professional examination of BAMS course commencing in July 2007 by quashing Clause 3.1 of the University Ordinance.

Case of the petitioner is that he took admission in BAMS Course with respondent No.2 - College in July 2004. The course is for five and a half years comprising of three professional years – each professional year being of one and a half years. The

same is followed by compulsory internship for one year. The petitioner completed studies of First Professional course in November/December 2005 and became eligible to appear in examination. The examination consists of six papers. He cleared some of them and got reappear in three. According to the Ordinance of the University and regulations framed by respondent No.3 - Central Council of Indian Medicine (CCIM), even if a student does not clear all the subjects, he can be promoted to Second Professional Year. The petitioner was promoted to Second Professional year in January 2006. In July 2006, the petitioner appeared in three supplementary examinations but could qualify one and got reappear in the two. He again appeared in third chance in December 2006 and got reappear in one subject, which he could not pass. He wished to appear in the said subject again in July 2007, which is permissible as per rules framed by the University. He has not been allowed to appear for the Second Professional examination on account of not having cleared one subject of the First Professional examination under the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Regulations 1986 ("1986 Regulations"). There is no impediment to his taking Second Professional examination in July 2007 simultaneously while reappearing for one paper of the First Professional examination. Under Clause 3.1, he is entitled to four

chances to clear the First Professional examination. The petitioner relies upon judgment of this Court dated 9.5.2007 in CWP No.4487 of 2007 (Himanshu and another v. Baba Farid University of Health Sciences and others), Annexure P.7, wherein identical issue was considered.

It is also pointed out that while a candidate is allowed six attempts as per Regulation 9(i)(b) of the 1986 Regulations, as per Punjab University Ordinance 3.1, only two chances are allowed. Para 3.1 of the Ordinance is as under:-

“3.1 FIRST PROFESSIONAL EXAMINATION (to be held at the end of 1-1/2 years).

(i) the first professional period shall ordinarily start from 1st day of July and end 31st December next year. The examination shall ordinarily be completed by the end of next year December/January. The supplementary examination of First professional shall be ordinarily held within six months of the declaration of result of main examination. The candidate be allowed two chances after the First professional examination. Admission of the candidate to BAMS courses who is unable to clear all the subjects of First Professional examination within the admissible chances, will stand cancelled.”

Respondent No.1 – Panjab University has contested the petition by submitting that as per BAMS examination Regulations, a person cannot be allowed to continue to the next higher class unless he has cleared all the subjects of the lower class.

We have heard learned counsel for the parties and perused the record.

The question for consideration is whether the petitioner can be debarred from joining Second Professional course on the ground that he had not cleared all the subjects of the First Professional examination. To decide this question, it will be necessary to refer to the relevant rules.

As per 1986 Regulations, six attempts are allowed to pass First Professional examination and only restriction for not passing First Professional examination is that a candidate cannot appear for second Professional examination but there is no restriction on his joining second Professional examination. If six attempts are legally permissible, restriction on appearance for second professional course will defeat the right of a candidate to avail six consecutive attempts without suffering any disqualification. Reasonable interpretation of the rule will be to permit the candidate to appear for the second professional examination. Language of Regulation No.9 (i) is clear and extracted below:-

“i) a) The Ist Professional period shall be 18 months duration and the examination shall ordinarily be completed by the end of next year Nov/Dec. The supplementary examination of Ist professional shall be held within six months of declaration of result.

b) A candidate who fails in one or more subjects of First professional examination may be allowed to keep term in second professional course. Only those students who pass in all subjects of Ist Prof. BAMS examination shall be allowed to take second professional examination.

The students shall be allowed to clear all the subjects of first professional BAMS examination in six consecutive attempts including the first attempt in which they were eligible to appear, failing which they shall have to appear in all the subjects of the first Prof. BAMS examinations (amended by BOM on 11.11.2004, vide para 4(c).”

Same view has been taken by this Court in **Himanshu** (supra), wherein it was observed:-

“It is an admitted position that as per Regulation of respondent No.2, the petitioners can pass the subjects in which they were declared fail in Ist Professional annual examination in the month of December 2005, in six attempts i.e., they are entitled to pass those subjects upto May 2008. It is also admitted position that as per regulation of respondent No.1, without passing all the

subjects, the petitioners are eligible to attend class for 2nd professional. However, as per Rules they cannot sit in the annual examination of the 2nd professional and also for the 3rd Professional. They will become eligible to appear in the annual examination for the 2nd Professional, only when they will pass all the subjects of Ist professional, may be in six chances, after Ist Annual examination. It is also an admitted fact that even without appearing in the 2nd Professional annual examination, the petitioners are eligible to be admitted in 3rd professional.

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In view of the facts mentioned above, we feel that the petitioners are entitled to appear in the annual examination for 2nd Professional of BAMS course. Accordingly, we allow this writ petition, by granting above said relief to the petitioners. The University is directed to declare their result, however, it is made clear that in case the petitioners fail to pass all the subjects of Ist Professional in six chances, permissible to them i.e., upto May 2008, they shall not claim any benefit of their putting in appearance and declaration of their result for the 2nd and 3rd professional.”

Since a candidate is allowed six attempts, restriction to take second professional examination is inconsistent with the six attempts allowed. Ordinance 3.1 restricting right of a candidate to

only two chances, is also in conflict with Regulation 9(i)(b).

In order to give effect to provision incorporated in regulation 9(i)(b), the restriction to take second professional examination in absence of passing of the subjects of Ist Professional examination and restriction of two chances under para 3.1 of the Ordinance have to be read consistent with Regulation 9 (i)(b), as held by this Court in **Himanshu** (supra).

For the above reasons, we allow this petition and hold that not passing of the subjects of Ist Professional examination will not be a bar for the petitioner to appear for second Professional examination till the six consecutive attempts have been availed by the candidate in accordance with Regulation 9(i)(b), as held in the judgment of this Court in **Himanshu** (supra)..

(Adarsh Kumar Goel)
Judge

July 10, 2007
'gs'

(Ajai Lamba)
Judge